

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED
MAR 20 2017

Charles B. Kornmann
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LENFORD NEVER MISSES A SHOT,

Defendant.

3:03-CR-30063-CBK

ORDER

Defendant pleaded guilty to sexual abuse and, on May 11, 2004, was sentenced to 210 months custody. He filed a motion (CIV 04-3024) to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255, relying upon the decision of the United States Supreme Court in Blakely v. Washington, 124 S.Ct. 2531 (2004). The petition was summarily dismissed because Blakely had not been found to be retroactive on collateral review to cases that were final when Blakely was decided.

Defendant filed a second motion (CIV 06-3019) to vacate, alleging ineffective assistance of counsel and that he was incompetent to enter a plea. That motion was summarily denied because he did not comply with Rule 9 of the Rules Governing Section 2255 Proceedings for the United States District Courts which requires an order from the Court of Appeals authorizing a second or successive petition and because the motion was untimely.

Defendant has now filed a motion for leave to file a second or successive motion to vacate pursuant to 28 U.S.C. § 2255(h)(2). Pursuant to § 2255(h), such motion must be submitted to the United States Court of Appeals for the Eighth Circuit.

Now, therefore,

IT IS ORDERED that the motion, Doc. 52, for leave to file a second or successive motion to vacate is denied.

DATED this 10th day of March, 2017.

BY THE COURT:


CHARLES B. KORNMANN
United States District Judge